IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Ugar Sen & Ors. vs. State of Rajasthan

DB Cri. Appeal No.98/1999

Under Section 374 (2)Cr.P.C. against the judgment dated 18.02.99 passed by the Addl.Sessions Judge, Sriganganagar, in Sessions Case No.07/1998.

.....

Date of Judgment: 28th November, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.M.K.Garg for the appellants.

Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

This appeal is directed against the judgment dated 18.02.99 passed by the Addl.Sessions Judge No.1, Sringanganagar, in Sessions Case No.07/1998 whereby the learned Judge has convicted the appellants under section 302/34 IPC and sentenced to life imprisonment and a fine of Rs.1,000/- each, in default of payment of

fine to further undergo one month's R.I. He further convicted the appellants under section 201 and 364 IPC and sentenced to three years' R.I.and a fine of Rs.1,000/- each, in default of payment of fine to further undergo one month's R.I. Both the sentences will run concurrently.

Briefly stated, the facts of the case are that PW/1 Prem Kumar lodged a FIR at the police station Lalgarh Jatan in which he stated that his father lives in the village alone and adjacent to his father's house there is house of his uncle Daya Ram. They are having inimical terms due to some dispute over the land. He further states that on 01.01.98 they had a turn of water, due to that reason they had gone to their field. In the night at about 02.00 PM they say that Daya Ram, Kishan and Sudhir were going on a tractor towards Lalgarh Jatan. He further states that today morning i.e. 02.01.98 Pradeep was in his Dhani and on the previous night, the accused persons Daya Ram , Kishan, Om Prakash, Sudhir and Surendra Kumar have taken away Mani Ram and they all gave him beating and he further informed that he had seen the occurrence by standing in the lane. On this information, he went to his brother Dilip and then both went in search of their father Mani Ram. By that time, one Ram Pratap informed him that near the Railway Line a dead body is

lying there. Then both went towards Bhudhurwali Railway line. They saw dead body is lying and they identified that body is of Mani Ram. Therefore, they suspected that after murdering Mani Ram they had left the dead body near the Railway line.

On this information, the police registered a case and investigation started. All four appellants were arrested and after usual investigation, the police filed a challan. Thereafter, the case was committed to the court of Addl. Sessions Judge No.1, Sriganganagar. The prosecution examined as many as 11 witnesses and then statement of the accused under Section 313 Cr.P.C. Was recorded. In defence, three witnesses were examined.

After conclusion of the trial , the learned trial Judge has convicted and sentenced the appellants in the manner stated above.

The appellants being aggrieved by the judgment of conviction and order of sentence dated 18.02.99, passed by the learned Addl.Sessions Judge No.1, Sriganganagar, preferred this appeal before this court.

We have heard the learned counsel for the parties and

have gone through the record of the case carefully.

Learned counsel for the appellants argued that three eye-witnesses namely, PW/1 Vinod Kumar, PW/2 Bhajan Singh and PW/3 Gurucharan Singh have not supported the prosecution story and they have been declared hostile. Only evidence of PW/4 Pradeep , who is said to be an eye witness of the occurrence, his statement was recorded by the police after six days of the incident and his statement under section 164 Cr.P.C. was also got recorded and statement in court, there are material contradictions in all these statements. The occurrence took place in the night and there was no source of light and in such circumstances, it was not possible for Pradeep to identify the assailants in the present case.

The learned Public Prosecutor for the State has supported the judgment of the learned trial court.

We have considered the rival arguments advanced by the learned counsel for the appellants and learned P.P. and carefully gone through the record.

The three eye witnesses , PW/1 Vinod Kumar, PW/2

Bhajan Singh and PW/3 Gurcharan Singh , having turned hostile, the case rests on the testimony of PW/4 Pradeep, the alleged eye witness. The reason given by this witness PW/4 Pradeep in his examination -in-chief, to go to the house of Mani Ram is that he heard the voice of Mani Ram acclaiming that he is being hit by stones. The reason given by this witness in his court statement, to go to the scene of occurrence, is the acclimation of deceased Mani Ram by virtue of which he stated that he is being hit by stones. In cross-examination, this witness has admitted that he has not incorporated this part of his version in Ex.D/1. He also admits that "Pathar mar rahe hai", is not incorporated in Ex.D/3. Thus, the very reason by virtue of which he claims that he reached the scene of occurrence is missing from his earlier statement. It creates a doubt about the veracity of his testimony. In his further cross examination, he has materially altered his statement in court it creates further doubt. He changes the time to suit the prosecution. The number of accused have also been changed. Change of name, change of number, change of time is writ large . In the statement he has even eliminated that part of his earlier statement, wherein he has stated that villagers were also there at the time of occurrence.

If the statement of this witness is seen in the background

that he was examined after six days of the occurrence, then it can be considered to be a very serious lapse on his part. Because he cannot afford not to inform the police about the gruesome incident which he has seen. This claim becomes subject to doubt more particularly, when his name does not find mention in the first information report. Thus, an uncorroborated testimony of this witness, fails to persuade us to sustain the findings of the trial court. If this witness is excluded, then the other eye witnesses having turned hostile, there is hardly anything in the record to support the prosecution case. We understand, in that background, the accused is entitled to benefit of doubt.

In the result, the appeal filed by the appellants are allowed and judgment dated 18.02.99 passed by the learned Addl.Sessions Judge No.1, Sriganganagar is set side. All the accused-appellants are acquitted of the charges levelled against them. All the accused are on bail and their bail-bonds stands discharged.

(DEO NARAYAN THANVI), J. **(BHAGWATI PRASAD), J.**

L.George